UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,366	12/30/2003	Christopher J. Laux	28888/04192	7781

24024 7590 05/16/2006

CALFEE HALTER & GRISWOLD, LLP
800 SUPERIOR AVENUE
SUITE 1400
CLEVELAND, OH 44114

EXAMINER	
FIDEI, DAVID	

ART UNIT	PAPER NUMBER
3728	

DATE MAILED: 05/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/748,366	LAUX ET AL.	
	Examiner	Art Unit	
	David T. Fidei	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-34* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *17-26* is/are allowed.

6)☒ Claim(s) *1-16 and 27-34* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *30 December 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *12/30/03 & 4/30/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 2, 4-6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Wissler (European document EP 0 439 690 A1). A device is disclosed including a housing 1 and removable tray 2.

As to claim 5, the lip member 12 defines a base connectable to the housing where the tray is mountable within the base.

As to claim 4 and 8, the cleaning implements are an intended use recitation that defines nothing patentably distinct over the prior art device based on the intended use.

3. Claims 1, 2, 4-6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Alissandratos (US Patent no. 4,033,650). A device is disclosed including a housing 10 and removable tray 27.

As to claim 5, a base 18 connectable to the housing where the tray is mountable within the base.

As to claim 4 and 8, the cleaning implements are an intended use recitation that defines nothing patentably distinct over the prior art device based on the intended use.

4. Claims 1, 2, 4-6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Hess (US Patent no. 2,464,085). A device is disclosed including a housing 10 and removable tray 34.

As to claim 5, a base 12 connectable to the housing where the tray is mountable within the base.

As to claim 4 and 8, the cleaning implements are an intended use recitation that defines nothing patentably distinct over the prior art device based on the intended use.

5. Claims 9-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Ramsey et al (US Patent no. 5,984,100). A device is disclosed including a housing 10 and removable tray having a first and second implement that can be considered either of plunger 16 or cleaning brush 17 that cooperates with one another so that the respective implement heads are offset respectively as shown in figure 2.

As to claim 10, a front portion is defined by the hinged where the rear portion is formed at 27 to support one of the implements and the front portion is considered as formed (as part of an arc) to support the other implement in as much as is claimed.

As to claim 11 a "tray"[1] 25 is disclosed for catching fluid draining from the cleaning implements.

As to claim 12, a base 22 is detachable connected to the housing. As to claim 13, the tray 25 is mounted within (the peripheral confines) of the base as shown in figure 2.

As to claim 16, an aperture is defined through the material where a door section 14 is hinged to the housing.

---

[1] Tray - A shallow flat receptacle with its contents, Receptacle – A container that holds items or matter. Dictionary.com

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 3 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 5 above, and further in view of by Ramsey et al (US Patent no. 5,984,100). The difference between the claimed subject matter and the prior art resides in the tray covered or impregnated with a microbial material.

Ramsey col. 5, lines 23-28 discloses that it is known in the art to storage devices that come in contact with bathroom cleaning implements having a coating, or impregnated with, with a microbial material. It would have been obvious to one of ordinary skill in the art to modify the prior art by constructing any, or all, of the component parts coated with a microbial material as taught by Ramsey. The motivation for the modification is expressly stated in Ramsey col. 5, lines 32-34.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 9-16 and 27-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 defines a first and second implement where the first implement handle "cooperates" with the second implement handle. It is not known what applicant intends this language to encompass, nor is it seen where the present disclosure is of any help in determining the meets and bounds of this language.

In claim 16, "the material" has no antecedent basis.

Regarding claim 27, the phrase "a trough-like member" is considered equivalent to reciting a "a trough, or the like, member". This renders the claim indefinite because the claim includes elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claims unascertainable. See MPEP § 2173.05(d).

Allowable Subject Matter

11. Claims 17-26 are allowed.

12. Claims 27-34 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

REPLY BY APPLICANT OR PATENT OWNER TO THIS OFFICE ACTION

13. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections

to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

If no amendments are made to claims as applicant or patent owner believes the claims are patentable without further modification, the reply must distinctly and specifically point out the supposed errors in the examiner 's action and must respond to every ground of objection and rejection in the prior Office Action in the same vain as given above, 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

The examiner also points out, due to the change in practice as affecting final rejections, older decisions on questions of prematureness of final rejection or admission of subsequent amendments do not necessarily reflect present practice. "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)" (emphasis mine), see MPEP 706.07(a).

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David T. Fidei
Primary Examiner
Art Unit 3728

dtf
May 13, 2006